JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CIVIL
CITATION	**:**	YAP -v- MATIC [No 7] [2023] WASC 55
CORAM	**:**	SOLOMON J
HEARD	**:**	13 DECEMBER 2022, 30 JANUARY 2023 & 23 FEBRUARY 2023
DELIVERED	**:**	23 FEBRUARY 2023
PUBLISHED	**:**	1 MARCH 2023
FILE NO/S	**:**	CIV 1106 of 2022
BETWEEN	**:**	VIVIEN JIT SIEN YAP First Plaintiff EMPIRE SONS (AUSTRALIA) PTY LTD T/AS RAY WHITE (DALKEITH CLAREMONT) Second Plaintiff AND SANDI MATIC Defendant

Catchwords:

Contempt of Court - Penalty - Whether conduct was contumelious - Whether imprisonment appropriate penalty - Where contemnor serving a prison sentence

Legislation:

Rules of the Supreme Court 1971 (WA), O 55 r 3, r 7, r 8
Sentencing Act 1995 (WA)

Result:

Defendant sentenced to 21 days' immediate imprisonment

Category: B

Representation:

Counsel:

First Plaintiff	:	M L Bennett
Second Plaintiff	:	M L Bennett
Defendant	:	In Person

Solicitors:

First Plaintiff	:	Bennett
Second Plaintiff	:	Bennett
Defendant	:	Not Applicable

Case(s) referred to in decision(s):

Commissioner for Fair Trading v Holz [2006] WASC 202 (S)
Corruption and Crime Commission v Allbeury [No 2] [2011] WASC 26
Hunt v Clarke (1889) 58 LJ (QB) 490
John Fairfax & Sons Pty Ltd v McRae (1955) 93 CLR 351
Mansell v Mignacca-Randazzo [2013] WASC 66
R v T [2022] WASCA 34
The Commissioner for Consumer Protection v Armstrong [No 5] [2015] WASC 37
Wood v Staunton [No 5] (1996) 86 A Crim R 183
Yap v Matic [No 4] [2022] WASC 522
Yap v Matic [No 6] [2023] WASC 24

SOLOMON J:

(This judgment was delivered extemporaneously on 23 February 2023 and has been edited from the transcript.)

Introduction and background

1 On 13 December 2022, I found Sandi Matic guilty of contempt in the face of the court by his failure to appear before the court on 30 November 2022, contrary to the court's order. The background and context of that contempt is set out in ***Yap v Matic [No 4]*** [2022] WASC 522. These reasons relate to the penalty to be imposed by the court in relation to that contempt.

2 Mr Matic had previously been found guilty of contempt by my orders dated 27 October 2022. In relation to the first contempt conviction, I ordered that Mr Matic pay the plaintiffs' costs on an indemnity basis. I also noted in that judgment that:

> I will take this opportunity, however, to urge Mr Matic to use this occasion to appreciate the gravity of what he has done. Mr Matic ought to realise that he must proceed in his affairs with an unqualified acceptance of the court's authority, and in particular the requirement that he obey the court's orders.[1]

3 At the conclusion of that hearing, Sandi Matic expressed a desire to seek legal advice. I adjourned the matter of the second charge for contempt of court to give Sandi Matic that opportunity.

4 On 13 December 2022, the matter returned so that Mr Matic could present his defence to the charge of contempt in the face of the court. Sandi Matic represented himself at that hearing. It appeared that Sandi Matic had elected not to seek legal advice, or at least had decided not to act upon it. The reasons proffered by Mr Matic on that occasion to explain his non-appearance were, in my view, insufficient. I therefore made orders convicting Sandi Matic of contempt and programming the issue of penalty to 30 January 2023. I once again urged Mr Matic that it would be beneficial for him to seek legal advice regarding the penalty.

5 Separately, on 30 January 2023 her Honour Archer J convicted Mr Matic of criminal contempt – his third conviction for contempt in the context of these proceedings.

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[1] ***Yap v Matic [No 4]*** [2022] WASC 522 [37].

6 Sandi Matic did not appear at the hearing before me, or at the hearing before Archer J, on 30 January 2023. I adjourned this penalty hearing to 9 February 2023.

7 The plaintiffs through the fourth affidavit of Thomas Anthony Coltrona, deposed to the fact that Mr Matic had appeared at the taxation of the plaintiffs' bill in this matter on 25 January 2023. Mr Coltrona's evidence was that at that hearing, Mr Matic told the taxing officer that he had been evicted from his property, that all his personal items had been seized, and that he no longer had access to his emails.[2]

8 Mr Matic has provided no evidence of his own to that effect. Further, as at the time of delivery of these reasons, Mr Matic has failed to provide updated details of service to either the plaintiffs or to the court. Since the fourth affidavit of Mr Coltrona was filed, all orders have been mailed to Sandi Matic's parents, and his appearance times have been communicated via text message. Notwithstanding the evidence of what Mr Matic told the taxing officer, he has continued to communicate with the court by email.

9 On 3 February 2023, Archer J committed Mr Matic to three months' imprisonment. That sentence was to execute on 16 February 2023 and would be discharged in the event that Mr Matic paid a fine of $9,000 and paid the plaintiffs' costs for that application, which were fixed by her Honour in the amount of $10,854.[3]

10 Given that the status of that order of committal could not be determined with any certainty on 9 February 2023, the date to which I had originally adjourned this hearing, I considered it appropriate to adjourn the delivery of these reasons to a later date. Mr Matic was given notice of that adjournment and asked to provide his availability, both by text and by email. Mr Matic offered no response. I adjourned the delivery of these reasons to 23 February 2023, and I ordered that Mr Matic attend that hearing.

11 By 16 February 2023, Mr Matic had not paid the court's fine nor the plaintiffs' costs. An arrest warrant was issued by Archer J on 17 February 2023. Mr Matic was arrested on 21 February 2023 and taken into custody to serve the sentence imposed on him by Archer J. Sandi Matic appears at the court today having been transported here from Hakea prison.

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[2] Fourth affidavit of Thomas Anthony Coltrona (sworn 27 January 2023) [4].
[3] ***Yap v Matic [No 6]*** [2023] WASC 24 [58].

Material relied upon by the contemnor

12 At the hearing on 13 December 2022, I extended to Sandi Matic the opportunity to put material before the court, either in the form of affidavit or submissions, relevant to the question of penalty.

13 On 28 December 2022, Sandi Matic filed a document through the eCourts system entitled 'Declaration in the Format of an Affidavit of the man answering to the name Sandi Matic dated 09-12-2022.' Though the title suggests that the document was created prior to the hearing on 13 December 2022, it was sworn and filed on 28 December 2022. The document states as follows:

> **In All Matters Concerning:**
>
> The man commonly addressed by the name Sandi of the family Matic
>
> **Fiat Justitia, Ruat Coelum**
>
> Let Right Be Done, Though The Heavens Should Fall
>
> **Declaration in the Format of an Affidavit of the man answering to the name Sandi Matic dated 9-12-2022**
>
> I, the private man answering to the name Sandi Matic, of Perth, Western Australia, in my correct public capacity as beneficiary to the Original Jurisdiction, competent to testify, my yes be yes, my no be no, do affirm and say;
>
> 1. I have first hand personal knowledge of the facts within this my Declaration.
>
> 2. I believe that the allegations of fact in the Notice and this Declaration are true.
>
> 3. I am over the age of twenty one and competent to testify if so required.
>
> 4. I am a living breathing private man.
>
> 5. On Monday 5 Dec 2022 I was unwell (sick) and was unable to report for bail as per the undertakings I was compelled to enter.
>
> 6. I provide you with the Original notice from doctor advising to the same from paragraph 5 provided. Annex 'A'.
>
> 7. On Wednesday 7 Dec 2022, I was 'arrested' by 4 or 6 officers from Wembley Police Station taken to a building I believe to be referred to as 'Supreme Court of Western Australia' and was unable to report that day.

> 8. I hereby notice the holder of this Affidavit; unrelated to the bail reporting undertakings I am completing before 4:00pm today 9 Dec 2022, I am making a Notice that I believe the conduct of the officers in paragraph 7 was/is:
>
> a. Officers were informed I am freely coming into the station (Annex. 'B') and was freely intending to attend court that day (Annex. 'C');
>
> b. Conduct of the officers was unlawful;
>
> c. Number of criminal offences were committed by the officers;
>
> d. The officers were advised that I would be invoking the Office of the Commonwealth Public Official and afforded number of opportunities to remedy the mistake before the criminal acts occurred, whilst they were doing the acts and after I was nabbed and forced into police wagon;
>
> e. I Reserve All My Rights regarding these matters and all other existing and future matters involving the Western Australia Police Force.
>
> 9. Further, I saith not.
>
> **As good as aval.**

14 The content of that document does not relate to the issue of penalty for contempt arising out of the events of 30 November 2022.

15 On 24 January 2023, Sandi Matic filed with the Supreme Court central office a letter addressed to the Principal Registrar. It was brought to my attention, as the case managing judicial officer. The letter provided as follows (without correcting for grammar or spelling):

> Dear Principal Registrar
>
> [I] sandi, a living and breathing man, require your help.
>
> [I] am over age of twenty-one and competent to testify in capacity of sui juris.
>
> [I] wish to obtain a declaratory judgement and claim my God given rights by enforcing an order from my superior court of record to discharge all previous contracts that were entered into without full disclosure.

> [I] am not a 'person' or 'defendant' or 'party,' or any other artificial legal construct and I beleve no evidence exists to prove otherwise.
>
> [I] believe no evidence exists that I am not a living breathing man and a son of my Creator.
>
> [I] do recognise compelled performance but [I] don't believe there is any contracts bearing my autograph or 'signature' whereby I entered into any admiralty/maritime contracts.
>
> [I] petition the honourable court to exercise its authority and grant a declaratory relief in form of judgement as it is my wish to settle the charges and live my life in peaceful possession of my property without causing harm or injuring another man or woman.
>
> These are my wishes.
>
> by: Sandi Matic

16 Once again, this document does not relate to the issue of penalty that I am dealing with today. Instead, it is an informal application for some form of declaratory relief. The application is incompetent and incoherent. It provides no basis for the grant of declaratory or any other relief. For the avoidance of any doubt, I dismiss that application.

17 At the time of delivering these reasons, Sandi Matic has put no further material before the court in relation to the penalty for contempt notwithstanding the opportunity to do so. Despite multiple, firmly worded recommendations from judges of this court, Sandi Matic has elected not to seek legal advice, or at least not to act upon it.

Principles

18 Contempt of court is a matter that lies both within the court's inherent jurisdiction and is provided for by the statutory regime relating to the court's powers. It is a tool that the court may employ to protect the due administration of justice. A finding of contempt may be dealt with summarily and may, if appropriate, result in the imprisonment of a contemnor without trial.

19 The ability of the court to charge a party with contempt, to determine the matter of guilt and to impose a penalty of its own volition is an immense power and must be exercised sparingly.[4] It is therefore important to distinguish between that conduct of which the court

[4] ***John Fairfax & Sons Pty Ltd v McRae*** (1955) 93 CLR 351, 370.

disapproves, and that which attracts the court's condemnation and punishment.

20 In ***John Fairfax & Sons Pty Ltd v McRae***, their Honours Dixon CJ, Fullagar, Kitto and Taylor JJ quote from Cotton LJ in ***Hunt v Clarke*** as follows:[5]

> A penalty will not be imposed in its exercise 'unless the thing done is of such a nature as to require the arbitrary and summary interference of the court in order to enable justice to be duly and properly administered without any interruption or interference'.[6]

21 Conduct which the court considers unusual, irritating, rude or even belligerent does not necessarily invoke the summary powers of the court. A party may express beliefs about the legitimacy of a court order, or the quality of a judgment, or may resist particular principles of law. It is not enough that the court is insulted, or that the beliefs expressed do not align with those of the judicial officer. The threshold requirement is that the court must find that the conduct interferes with the administration of justice or in some way demonstrates a contumelious disrespect for the authority of the court.

22 In matters such as this it is particularly important to emphasise that the court does not impose punitive measures in relation to people's beliefs. Mr Matic is quite entitled to his beliefs even if they are irrational, irritating or even offensive to others. In a tolerant and humane society people must be entitled to hold such beliefs without fear of sanction or punishment from the State. History is littered with the tragic consequences of intolerance and injustice perpetrated by state authorities for beliefs that do not meet with the approval of the governing or ruling elite. However, at the same time the court must be concerned with, and must remain vigilant to protect, the administration of justice from conduct, including on occasion the expression of views, that corrodes public confidence in and respect for the courts and the justice system. A just and tolerant society must zealously guard the instruments and institutions that preserve justice and tolerance.

23 Turning to the *Rules of the Supreme Court 1971* (WA) (the Rules), O 55 r 3 provides as follows:

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[5] ***Hunt v Clarke*** (1889) 58 LJ (QB) 490, 493.
[6] ***John Fairfax & Sons Pty Ltd v McRae*** (1955) 93 CLR 351, 370.

> **3. Contempt in face of Court**
>
> (1) When it is alleged or appears to the Court on its own view that a person is guilty of contempt of court committed in the face of the Court or in the hearing of the Court, the presiding judge may, by oral order, direct that the contemnor be arrested and brought before the Court as soon thereafter as the business of the Court permits, or may issue a warrant under his hand for the arrest of the contemnor.
>
> (2) When the contemnor is brought before the Court, the Court shall —
>
> (a) cause him to be informed orally of the contempt with which he is charged; and
>
> (b) require him to make his defence to the charge; and
>
> (c) after hearing him proceed, either forthwith or after adjournment, to determine the matter of the charge; and
>
> (d) make an order for the punishment or discharge of the contemnor.
>
> (3) The Court may, pending disposal of the charge —
>
> (a) direct that the contemnor be detained in such custody as the Court directs; or
>
> (b) direct that the contemnor be released on bail.
>
> (4) The powers given by this rule are exercisable, mutatis mutandis, by a judge sitting in chambers except that the contemnor must be brought before the Court sitting in court, and the Court shall hear and determine the charge and make the order.

24 The penalty applicable to contempt in the face of the court is not governed by the *Sentencing Act 1995* (WA).[7]

25 Order 55 rr 7 and 8 of the Rules provide as follows:

[7] *Sentencing Act 1995* (WA) s 3(3).

> **7. Punishing Contemnors**
>
> (1) The Court may punish contempt of court by committal of the contemnor to prison, or by imposing a fine on him, or by both committal and fine.
>
> (2) When the Court imposes a fine, it may order that the contemnor be imprisoned, or further imprisoned, until the fine is paid.
>
> (3) Where the contemnor is a corporation the Court may punish contempt of court by sequestration, or fine or both.
>
> (4) An order of committal may be in Form No. 66.
>
> **8. Execution of committal order may be suspended**
>
> The Court making an order of committal may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as the Court thinks fit.

26 Further principles in relation to contempt were explored by this court in ***Corporation and Crime Commission v Allbeury [No 2]***. In that decision, Martin CJ explained:

> As I have observed, the *Sentencing Act* does not apply as a matter of law to the sentences which I will impose this morning. However, there is authority by which I am bound (***Kennedy v Lovell***) to the effect that it is nevertheless appropriate to have regard to the principles of sentencing set out in s 6 of the *Sentencing Act.* Those principles include the principle that the sentence must be commensurate with the seriousness of the offence, and imposed after taking into account the circumstances in which the offence is committed, any aggravating factors, and any mitigating factors. Another principle imposed by that section, which I take into account, is that a sentence of imprisonment should not be imposed unless the seriousness of the offence is such that only imprisonment can be justified, or required for the protection of the community.
>
> …
>
> In ***Registrar of the Court of Appeal v Maniam [No 2]*** (1992) 26 NSWLR 309, 313 - 314, Kirby P observed:
>
> > Contempt law has been fashioned by the courts to protect the administration of justice. This is an activity, self-evidently of the greatest importance to society. It represents a vital part of

> the peaceful government of a community such as ours. In ***Ditfort v Calcraft*** (1989) 98 FLR 158 at 160, I said:
>
> > '… These well known features of our legal system make the faithful compliance with subpoenas issued by the courts essential to the proper administration of justice.'
>
> A conviction of contempt of court is a conviction of an offence, criminal in nature. Punishment of the convicted contemnor must therefore take into account the considerations normally applicable to the punishment of crime and apt to uphold the purpose of this jurisdiction, viz, the undisturbed and orderly administration of justice in the courts according to law. Thus, in determining the punishment which is apt to the circumstances which have led to a conviction of contempt, it is appropriate to bear in mind the purposes of punishing the contemnor; deterring the contemnor and others in the future from committing like contempts; and denouncing the conduct concerned in an approximately [sic appropriately] emphatic way: see ***Director of Public Prosecutions v John Fairfax & Sons Ltd*** (1987) 8 NSWLR 732 at 741.

This passage was cited with approval by Malcolm CJ in ***Kennedy v Lovell*** [7].

In addition to the considerations of punishment, deterrence and denunciation identified by Kirby P, as I have noted in my observations relating to the availability of an indeterminate sentence, it is open to a court to impose a sentence for the purpose of endeavouring to coerce an offender into performing his or her legal obligations. However, it is also established that such an offender should not be kept in custody for any period longer than would be appropriate as punishment for the contempt without regard to coercion (see ***Wood v Galea*** (1997) 92 A Crim R 287, 288 - 289; ***Re Barrell Enterprises*** [1973] 1 WLR 19, 27; ***Enfield London Borough Council v Mahoney*** [1983] 1 WLR 749, 755 et seq).[8]

27 Recently, the Western Australian Court of Appeal considered the purpose of punishing contemnors in ***R v T***. In that decision, Mazza, Mitchell and Vaughan JJA said:

> Sentencing for a contempt of court constituted by a breach of the court's orders may serve two distinct purposes. These purposes may be described as coercive and punitive. A sentence for contempt may provide a coercive means by which the court orders can be enforced and future compliance with the order secured for the benefit of a party to the proceedings can be ensured. However, a sentence for contempt may

[8] ***Corruption and Crime Commission v Allbeury [No 2]*** [2011] WASC 26 [16], [18] - [20].

> also punish wilful disobedience of a court's order so as to vindicate judicial authority and maintain the integrity of the court's process in the public interest.[9]

28 Their Honours went on to observe that:

> It is also clear that punishment of past intentional disobedience of court orders is a significant consideration in sentencing for contempt of court. As the Full Court of the Family Court of Australia recognised in *Tate*:
>
> > Normally, the purpose of contempt proceedings against a person for breach of such an order is to coerce them to comply with it. However, it is quite clear that another purpose of bringing proceedings for contempt against a person who has breached a non-monetary order of the court may be that of punishment. The purposes of imposing punishment would appear to reflect the need for individual and general deterrence and retribution for the party's failure to comply with the order. Retribution is called for because it is essential to the proper working of the court system that court orders are obeyed. If they are defied or ignored, the whole system of dispute resolution by litigation breaks down. While there are other means of dispute resolution available, in the final analysis a citizen has the right to approach a court to determine a dispute and the court has a duty to do so.[10]

29 The remaining relevant sentencing factors are those identified in ***Wood v Staunton [No 5]***[11]as set out at [28] of ***Yap v Matic [No 4]*** and need not be repeated.[12]

30 In relation to those factors, I make the following observations.

(a) Sandi Matic's contempt was serious in the sense that it was a deliberate and defiant disregard of an order of this court. However, other than continuing to delay the proceedings, and the distraction and diversion of public resources caused thereby, the consequences of the contempt were limited.

(b) The context of the contempt is unfavourable to Sandi Matic. At the time of the conduct that gave rise to the charge of contempt, that is 30 November 2022, Sandi Matic had already been convicted of contempt once before, on 27 October 2022.

[9] ***R v T*** [2022] WASCA 34 [70].
[10] ***R v T*** [2022] WASCA 34 [77].
[11] ***Wood v Staunton [No 5]*** (1996) 86 A Crim R 183.
[12] ***Yap v Matic [No 4]*** [2022] WASC 522 [28].

(c) The reason for the contempt, at least insofar as Mr Matic has submitted, was a lack of understanding of the significance of, or doubt in relation to the authenticity of, the relevant orders. In part for the reasons set out in ***Yap v Matic [No 4]***,[13] and in part in relation to the oral submissions proffered by Mr Matic on 13 December 2022, I do not accept those reasons.

(d) There is no evidence that Mr Matic gained any benefit from his contempt, other than to delay the proceedings by a week.

(e) Mr Matic has expressed no remorse, nor contrition, for his contempt in any real sense. In fact, since being convicted for contempt in December 2022, Mr Matic has continued to fail to appear at hearings, including the hearing of 30 January 2023.

(f) Other than matters I have canvassed in previous decisions in these proceedings, Sandi Matic has not put before the court any evidence of his character, personal circumstances, or antecedents. There is no evidence of any criminal record. However, I note again that at the time of the relevant contempt, Sandi Matic had already been convicted of contempt, and since that conviction, has been separately convicted of criminal contempt by her Honour Archer J.

(g) General and personal deterrence, and denunciation of the contempt, are important factors in this case. I shall return to these issues.

Contempt in the face of the court

31 Sentencing a person for contempt of court is a discretionary decision. The almost infinite contexts in which contempt can arise make it difficult to establish any sentencing ranges. However, I have had regard to the following sentences imposed for contempt in Western Australia, acknowledging that these cases do not establish any firm sentencing range for contempt of court.

32 In ***Commissioner for Fair Trading v Holz*** [2006] WASC 202 (S), Templeman J sentenced Mr Holz to a term of 28 days' imprisonment, conditionally suspended for 12 months upon ongoing compliance with the relevant injunction and completion of 60 hours of community service. In that matter, Mr Holz failed to comply with an undertaking to the court not to advertise himself as a 'model consultant', 'talent

[13] ***Yap v Matic [No 4]*** [2022] WASC 522 [5] - [13].

scout', or as being affiliated with the 'international Freelance Model Organisation'.

33 Templeman J made the following sentencing remarks:

> There is no doubt that the jurisdiction is one which involves a punishment of the contemnor; and that punishment will very frequently be significant and certainly can involve imprisonment until the contempt is purged. In imposing a punishment, I have to have regard to the usual principles which apply when Courts impose punishment on people and they include not only an appropriate punishment but rehabilitation to ensure that the person does not again commit that kind of offence.
>
> There has to be a deterrent, that is, something which will deter you from any further conduct of this kind and something which acts as a general deterrent so that if there is anybody else in the community who is minded to disobey Court orders, then they understand that appropriate penalties will be visited on them.
>
> In my view, having regard to the circumstances of the contempt, which I referred to in my findings, imprisonment is an appropriate penalty and a period of 28 days' imprisonment is, in my view, appropriate. I am willing to suspend that period of imprisonment for 12 months because I think and I hope that the threat of imprisonment will weigh heavily with you so that you will understand that you must comply with the orders made by Le Miere J on 15 September last year, and understand that if you do not comply with them then there will be no question about your going to prison for 28 days and any further punishment which might be warranted if you were to breach that order.[14]

34 In ***The Commissioner for Consumer Protection v Armstrong [No 5]*** [2015] WASC 37, Beech J imposed a sentence of 3 months' imprisonment suspended for 18 months. In that matter, Ms Armstrong sold a dog infected with parvovirus to a third party without reporting the sale to the relevant authorities, in contravention of the court's order that she was restrained from doing so. Ms Armstrong was found to have been aware of the relevant orders, to have deliberately contravened the order, and that she profited from her contempt in the amount of $450.

35 Beech J made the following comments:

> In my view, the appropriate punishment is a suspended order for imprisonment.

[14] ***Commissioner for Fair Trading v Holz*** [2006] WASC 202 (S), 4 - 5.

> I do not consider that a fine would reflect the serious and deliberate nature of the contemptuous conduct in the context of the history of Ms Armstrong's previous conduct. Moreover, given that Ms Armstrong has not met any of the payment obligations imposed by fines, costs orders or compensation orders, it seems to me that imposing a fine would be futile.
>
> The seriousness of a suspended sentence is reflected in its penultimate position in the hierarchy of sentencing dispositions. A term of suspended imprisonment will serve the important object of personal deterrence. If Ms Armstrong breaches the Orders during the period of suspension, she will be required to serve the suspended term of imprisonment, as well as face additional punishment for that further breach.

36 The question of contempt in the face of the court in circumstances where a contemnor is already serving a custodial sentence, was considered by this court in ***Mansell v Mignacca-Randazzo***.[15] In that matter, the contemnor, Mr Mansell was serving a life sentence for murder but still had a number of outstanding charges listed for mention. Mr Mansell refused to comply with orders that he appear via video link before the learned magistrate for the mention hearing. Having adjourned the matter several times and having served Mr Mansell with written directions that he was to attend at the relevant place to appear from prison, the learned magistrate convicted Mr Mansell of contempt in the face of the court. The learned magistrate imposed a term of 1 months' immediate imprisonment and made the following comment in relation to penalty:

> The practical effect of any penalty that I impose at this time, I fully realise, is notional. I realise that you are a sentenced prisoner, serving life imprisonment for murder, with a non-parole period of 18 years.[16]

37 Mr Mansell appealed that decision to the Supreme Court. One of the grounds of that appeal was that the contempt was, in effect, an absence from court, and therefore could not be considered 'contempt in the face of the court'. Hall J dismissed that ground of appeal, and made the following comment:

> On 16 December 2011 the matter was stood down to enable the appellant to comply with the direction. His non-compliance was clearly connected to those continuing proceedings and had the effect of interfering with them. The refusal to comply with the direction was

[15] ***Mansell v Mignacca-Randazzo*** [2013] WASC 66.
[16] ***Mansell v Mignacca-Randazzo*** [2013] WASC 66 [29].

> proximate to those proceedings and was, therefore within the meaning of the term 'in the face of the court'.[17]

38 The appellant also appealed on the basis that the sentence was excessive. Pursuant to the *Magistrates Court Act 2004* (WA), the maximum penalty for contempt was a fine of $12,000 or a term of imprisonment of no more than 12 months. His Honour Hall J made the following comment:

> Having regard to the nature of this contempt, its affect upon the proceedings and the persistence of the appellant's refusal to comply despite being given the opportunity to do so, a sentence of 1 month's imprisonment was well within the discretionary range. It was important to also ensure that the penalty acted as a deterrent both to the appellant and to others who might be inclined to act in a similar way in the future. There is no proper basis for a claim that the sentence was manifestly excessive.[18]

Mr Matic's contempt

39 The case of Sandi Matic raises important questions about the nature of contempt, and the metes and bounds of the court's authority. I shall emphasise again, that the function of this charge and penalty is not to punish Sandi Matic for his beliefs, or to necessarily seek to correct the beliefs that Sandi Matic holds in his private life.

40 However, Sandi Matic's behaviour has not been without a cost. That cost involves the court resources that are wasted in hosting repeated hearings when parties fail to appear. There is importantly, a social and reputational cost to the court when litigants are given wide berth to disregard or ignore court orders. There is a cost to other parties, who have the right to expect that court orders will be complied with.

41 Additionally, there is a clear need for personal and general deterrence. While Sandi Matic has previously been afforded by me the benefit of doubt in relation to his contemning, the circumstances of this contempt are different. That is most plainly illustrated by the origin of each of the charges. The first conviction for contempt was made out following an application from the plaintiffs in this matter. The second conviction, with which I am now dealing, arose of the court's own initiative.

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[17] ***Mansell v Mignacca-Randazzo*** [2013] WASC 66 [79].
[18] ***Mansell v Mignacca-Randazzo*** [2013] WASC 66 [116].

42 In my view, it is tolerably clear that Mr Matic has chosen to knowingly defy court orders. All of the surrounding circumstances, including Sandi Matic's communications with the court and his conduct at hearings relating to this conviction, lead in my view to an irresistible inference that Mr Matic's conduct is born from a lack of genuine acceptance of the authority of the court.

43 Mr Matic has at various points, been at pains to express that his failure to appear in accordance with court orders was not a rejection of the court's authority. Rather, he has asserted that his lack of compliance rests on his confusion about the proceedings and set of misguided beliefs about the justice system. This is illustrated by the following exchange at the hearing on 13 December 2022:

> **MATIC, MR:** Your Honour, can I ask questions in court, without any disrespect, just to actually try understand in my head what's happening? I will claim that I'm a man. No one has –
>
> …
>
> **MATIC, MR:** I've claimed that I'm a man. No one has disputed it, but yet I'm being – I mean, there's a number of precedents – what do you call it – precedents where it says that man is not subject to legislative laws. So I don't actually dispute it being under the jurisdiction of the Supreme Court of Western Australia as being able to sort of be found guilty and be tried for – under common law – not under statutory law. So where's – I mean, where's my remedial ---[19]

44 I have previously outlined that Mr Matic's beliefs appear to align with those of the self-proclaimed 'sovereign citizen' movement. This is a movement that has been gaining popularity and traction in Australia over the last few years but has also been prolific in other jurisdictions for longer. The growing prevalence of this class of beliefs and associated conduct is a matter of concern for the preservation of the authority of the court and the administration of justice. It reinforces the importance of general deterrence in the community. I reiterate again that Mr Matic is at liberty to hold his beliefs but that does not absolve him of the responsibility to adhere to the rule of law which includes acceptance of, and compliance with, court orders.

45 While Mr Matic has stressed in oral submissions and written communications that he is attempting to be 'honourable' and that he does 'respect the court authority', that is not a sentiment frankly, that

[19] Transcript, ***Vivien Jit Sien Yap & Anor v Sandi Matic,*** Supreme Court of Western Australia, 13 December 2022, 241 - 242.

can be taken seriously against the background of his actual conduct. By the time of the original hearing in relation to this penalty decision, that is the hearing on 30 January 2023, Mr Matic had twice been convicted of contempt by me. He had once been arrested and made to appear before the court. He had been instructed in no uncertain terms that 'if the court orders you to attend, it's not an invitation; it's an order'.[20] On 13 December 2022, when listing the penalty hearing on 30 January 2023, Sandi Matic's family commitments were accommodated and his preferences were taken into account.[21] Sandi Matic told the court that if the penalty was listed 'towards the later part of January…I can attend.'[22] Sandi Matic also expressly confirmed that the date and time set by the court were convenient to him.[23] I therefore did not consider it necessary to order that he appear at the penalty hearing. Nevertheless, Sandi Matic once again failed, without notice or explanation, to attend court on 30 January 2023.

46 Additionally, as part of Mr Matic's previous conviction for contempt of court, on 8 December 2022 I ordered that Mr Matic pay the plaintiffs' costs of their contempt application, fixed in the amount of $16,057 and payable forthwith. As at the time of this judgment, Sandi Matic remains in default of that order. This may be a further demonstration of Mr Matic's lack of respect for the authority of a court order. That ongoing default also casts doubt over the utility of making a costs order or imposing a fine on Sandi Matic.

Penalty

47 The sentencing options available to the court in respect of contempt are threefold.[24]

48 First, the court has the option to do nothing. I do not consider that this is an appropriate outcome in this instance. Sandi Matic has demonstrated a tendency to disobey court orders, and while his offending in the overall scheme of matters may be at the lower end of seriousness in terms of gravity on each occasion, the strong case for personal and general deterrence and the administration of justice in these circumstances calls for some form of penalty.

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[20] Transcript, ***Vivien Jit Sien Yap & Anor v Sandi Matic,*** Supreme Court of Western Australia, 7 December 2022, 228.
[21] ts 13 December 2022, 250.
[22] ts 13 December 2022, 249.
[23] ts 13 December 2022, 250
[24] *Rules of the Supreme Court 1971* (WA) O 55 r 7.

49 Secondly, the court has the option of imposing a fine. Again, I am not persuaded that this is an appropriate penalty in the circumstances. There is no material before the court, sworn or otherwise, as to Mr Matic's financial circumstances and capacity to pay. However, Sandi Matic has a variety of outstanding costs orders made against him in this matter, which as I understand it have yet to be paid. Those costs orders amount to a significant sum, and as yet in any event have failed to deter Sandi Matic.

50 The final sentencing option available is to impose a term of imprisonment. I am not bound by the requirements of the Sentencing Act, and the court is at liberty to imprison a contemnor for any period that the court considers appropriate. I am nevertheless required to have regard to the principles of the Sentencing Act, including that imprisonment ought to be a punishment of last resort.

51 In the circumstances, I am satisfied that it is appropriate that Mr Matic be imprisoned for 21 days. That is a term that will be served without parole.

The significance of the Archer J orders

52 Having convicted Sandi Matic of criminal contempt on 30 January 2023, Archer J sentenced Sandi Matic in his absence on 3 February 2023.

53 Her Honour made orders in the following terms (**the 3 February orders**):

> 1. Subject to order 2, and any further order of the Court, Sandi Matic is sentenced to three months imprisonment for the contempt (order of committal).
>
> 2. The order of committal shall not be executed if, by 16 February 2023, Sandi Matic pays:
>
> (a) a fine of $9,000 to the Supreme Court of Western Australia; and
>
> (b) costs of $10,854 to the plaintiffs' solicitors.
>
> 3. The plaintiffs' solicitors are to advise my associate by email within 18 hours of the costs being paid.

4. Sandi Matic is to advise my associate, by email if possible, as soon as possible after paying the costs to the plaintiffs' solicitors.

5. A further hearing will be held in this Court at 10am on 17 February 2023.

6. Sandi Matic is required to attend that hearing.

7. If Sandi Matic is imprisoned due to the operation of orders 1 and 2, and subsequently pays the fine and the costs, he may make an application to this Court to be discharged from custody.

8. Sandi Matic may, at any time prior to 17 February 2023, request a hearing before the Court to make an application that these orders be varied, by sending an email to my associate or by telephoning my associate, or by any other means.

54 I turn my mind to the question of suspending the term of imprisonment which I am now imposing.

55 Section 76(3) of the Sentencing Act provides:

> Suspended imprisonment is not to be imposed if –
>
> (a) The offence was committed when the offender was subject to an early release order; or
>
> (b) The offender is serving or is yet to serve a term of imprisonment that is not suspended. (emphasis added)

56 Section 81(3) of the Sentencing Act provides:

> [Conditionally Suspended Imprisonment] is not to be imposed if –
>
> (a) The offence was committed when the offender was subject to an early release order; or
>
> (b) The offender is serving or is yet to serve a term of imprisonment that is not suspended. (emphasis added)

57 In that regard, while O 55 r 8 empowers the court to suspend committal for contempt, it appears to me that as long as the 3 February orders stand, it is not possible to suspend Mr Matic's prison term, conditionally or otherwise. Even though I am not bound by the

Sentencing Act, the position reflected in the Sentencing Act is one to which I must have regard and, in any event, has logical force.

58 I shall therefore order that Sandi Matic is sentenced to a term of immediate imprisonment of 21 days, to be served cumulatively upon the three-month term imposed by her Honour Archer J.

59 In the event that Mr Matic makes payment in the terms of the 3 February orders, and makes an application pursuant to order 7, I make it clear that that will not disturb the term of imprisonment that I am imposing today. That means that regardless of whether Sandi Matic makes payment to the plaintiffs and to the court as arises out of the 3 February orders, he will serve the entirety of the 21-day term.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

IS
Associate to the Honourable Justice Solomon

1 MARCH 2023